

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES E. LUNDEEN, SR., M.D.,

Petitioner,

v.

**CASE NO. 2:11-CV-1054
JUDGE GRAHAM
MAGISTRATE JUDGE KING**

STATE MEDICAL BOARD OF OHIO,

Respondent.

ORDER

On November 29, 2011, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the petition for a writ of habeas corpus be dismissed because petitioner is not in custody within the meaning of the statutes governing habeas corpus. *Report and Recommendation*, Doc. No. 4. Petitioner has filed objections to that recommendation. *Objection*, Doc. No. 6. The Court will consider the matter *de novo*. 28 U.S.C. 636(b); Fed. R. Civ. P. 72(b).

Petitioner argues that he is in custody because he is subject to restraints not shared by the public at large in view of the Ohio Medical Board's suspension of his license to practice medicine and surgery in the State of Ohio, and his resulting inability to obtain employment as a physician. *See Objections*. The concept of custody for habeas corpus proceedings is not coextensive with a denial of an individual's liberty interest under the Fourteenth Amendment. Rather, the custody required in habeas corpus proceedings is actual, physical custody or a substitute for such custody, such as release on bond. *See Lawrence v. 48th Dist. Court*, 560 F.3d 475, 480 (6th Cir. 2009)(discussing *Hensley v. Mun. Court*, 411 U.S. 345 (1973)). The suspension of one's license to practice medicine is simply not the custody required of habeas corpus proceedings.

For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's objections are **OVERRULED**. The *Report and Recommendation*, Doc. No. 4, is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter FINAL JUDGMENT.

Date: December 15, 2011

s/James L. Graham

James L. Graham
United States District Judge